

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, KENNETH CHOW,
BRYANT WHITE, DAVID WILLIAMS,
MARQUIS ACKLIN, CECILIA JACKSON,
TERESA JACKSON, MICHAEL LATTIMORE
and JUANY GUZMAN, Each Individually, And On Behalf Of
All Other Persons Similarly Situated,

Plaintiffs,

-against-

THE FRESH DIET INC.,
LATE NIGHT EXPRESS COURIER SERVICES, INC. (FL),
FRESH DIET EXPRESS CORP. (NY),
THE FRESH DIET - NY INC. (NY),
FRESH DIET GRAB & GO, INC. (FL) a/k/a
YS CATERING HOLDINGS, INC. (FL) d/b/a
YS CATERING, INC. (FL),
FRESH DIET EXPRESS CORP. (FL),
SYED HUSSAIN, Individually,
JUDAH SCHLASS s/h/a JUDAH SCHLOSS, Individually,
and ZAIMI DUCHMAN, Individually

Defendants.
-----X

12 CV 4339 (ALC)(JLC)

**AFFIDAVIT OF
KENNETH CHOW
IN SUPPORT OF
PLAINTIFFS' MOTION
FOR PRELIMINARY
CLASS ACTION
CERTIFICATION**

KENNETH CHOW, being duly sworn and subject to the penalties for perjury, deposes
and says:

1. I am a New York resident and a former driver/food delivery employee for the
Defendants.

2. I was employed by the Defendants from approximately November 2008 to late
April 2012.

3. I am a named Plaintiff in this action. I submit this affidavit in support of Plaintiffs'
motion to certify this matter as a class action pursuant to Fed. R. Civ. P. 23. and based on the

laws of the State of New York, including the New York State Labor Law, with me as one of the class representatives.

4. I submit this affidavit based on my personal knowledge and I am prepared and competent to testify to the matters set forth in this affidavit.

5. My job responsibilities as a driver/food delivery employee consisted of showing up to The Fresh Diet, Inc.'s Brooklyn facilities, receiving instructions as to my delivery routes, obtaining prepared meals, and personally delivering them to The Fresh Diet, Inc.'s customers throughout New York City and the tri-state metropolitan region, including locations in New York, New Jersey and Connecticut. After completing the meal deliveries, I would have to return to The Fresh Diet, Inc.'s Brooklyn facilities to check back in, complete required paperwork and return empty Fresh Diet bags.

6. Throughout my employment, my work was performed under the supervision, direction and control of Defendant Syed Hussain, who was the New York City-area Regional Delivery Manager for The Fresh Diet, Inc. and closely related companies. Defendant Hussain worked out of the Fresh Diet, Inc.'s Brooklyn facility and maintained an office there.

7. Defendant Hussain's assistant was Owen Dacres. Defendant Hussain referred to Mr. Dacres as the assistant manager.

8. Throughout my employment, I often worked significantly in excess of forty (40) hours a week, yet was never paid overtime compensation of one and one-half (1.5) times my regular rate of pay.

9. During my employment with the Defendants, I interacted with other drivers/food delivery employees on a daily basis. I therefore know that my own experiences were typical of

how we were all supervised and compensated. Moreover, my duties, tasks and responsibilities were, in all material respects, the same of these other drivers and/or food delivery employees.

10. Based on my personal knowledge, which includes my personal experiences and observations, as well as my conversations with other drivers/food delivery employees, the following is true:

- (a) All drivers who worked for Defendants in the New York City area (the "New York City-area drivers") were under the supervision, direction and control of Defendant Hussain;
- (b) All assignments were received from Defendant Hussain, and the New York City-area drivers had to do the work they had been assigned;
- (c) All New York City-area drivers had to report to Defendant Hussain at the beginning and end of each shift that they worked. At the end of their shifts, all New York City-area drivers had to report how many meals they had delivered, how many miles they had driven, and how many stops they had made. They also had to return empty bags. New York City-area drivers who did not comply with these requirements were subject to discipline, up to, and including termination;
- (d) All New York City-area drivers were expected to report to work at specific times. The schedules were created by Defendant Hussain. New York City-area drivers could not decide when to show up for work. If they did not arrive to work at the assigned times they were subject to discipline, up to, and including termination;
- (e) None of the New York City-area drivers was at liberty to choose their assignments. They could not refuse to do the work that they were assigned;
- (f) All New York City-area drivers had to complete the routes that they had been assigned and to report back to Defendant Hussain. If they failed to complete their assigned routes or if they missed an assigned stop, they were subject to discipline, up to and including termination;
- (g) Defendant Hussain could change driver schedules and reduce or increase assignments at his complete discretion, without advance notice to the New York City-area drivers;
- (h) All New York City-area drivers performed the same type of work. That is, each one showed up to The Fresh Diet, Inc.'s Brooklyn facility at his or her assigned time, each would receive his route assignment for his

shift, each one would take the food that was prepared in the kitchen, by the kitchen staff, and then deliver it. There were no meaningful differences between the duties, tasks and responsibilities of the different drivers;

(i) The work was completely standardized. All drivers had to deliver the food in the exact same way, each meal had to be delivered in a bag provided by The Fresh Diet, Inc., and drivers then had to return to the Brooklyn facility. What any New York City-area driver did as far as delivering meals to customers was the same as what any other driver did, apart from their specific delivery route;

(j) New York City-area drivers could not arrange with one another to change their assignments without those changes being authorized in advance by Defendant Hussain;

(k) New York City-area drivers who attempted to change their assignments without first obtaining Defendant Hussain's approval were subject to discipline, up to and including termination;

(l) Any driver who deviated from ¶ 10(a)–10(k) was subject to discipline, up to and including termination;

11. In addition to myself, I am aware and have personal knowledge that the Defendants employed many other similarly situated drivers and/or food delivery employees and routinely failed to pay them overtime compensation of one and one-half times their regular rates for those hours that they worked in excess of forty (40) per week.

12. I have reviewed the list of drivers and/or food delivery employees attached as Exhibit A, which I understand was produced by the Defendants in this action on or about December 21, 2012. I recognize the majority of persons listed. These persons also worked as drivers/food delivery employees for the Defendants. The individuals whose names I recognize had the same duties, task and responsibilities that I had. Each person whose name I recognize reported to Defendant Hussain and was subject to his supervision, direction and control.

13. I fully understand my responsibilities and duties as a class representative, should I be designated as such, and particularly that I would owe a duty of loyalty to the class that I represent. I understand that this means that I must look after the interests of the class, and will

undertake my best efforts to vigorously prosecute the action on the class members' behalf and ensure that the class is treated fairly and its interests are protected. I will make myself available to participate in all activities required to conduct the case in a professional and effective manner, including, but not limited to locating witnesses, documents, and evidence, submitting to depositions and examinations, and attending conferences. I will not compromise the interests of the class members for my own personal gain.

14. I declare under perjury that the foregoing is true and correct.


KENNETH CHOW

Sworn to before me on February 1, 2013


Notary Public
State of New York

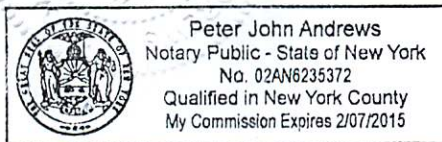


EXHIBIT A

| Payroll Name | Address Line 1 | Address Line 2 | City | State/Province | Zip/Postal Code |
|-----------------------|-----------------------|------------------|---------------|----------------|-----------------|
| Acklin, Marquis P | 3236 Seymour | | Bronx | NY | 10469 |
| Alexander, Banite | 45b Birch Rd | | Cedar Grove | NJ | 07009 |
| Alvarez, Julian | 1245 Stratford Ave | Apt B-4 | Bronx | NY | 10472 |
| Au, Vinh V | 2069 E 14th St | | Brooklyn | NY | 11229 |
| Banite, Chimeye Z | 45 Birch Rd | | Cedar Grove | NJ | 07009 |
| Barnett, Antione Tony | 220 WOODWOLPH AV. | APT 1 | Yonkers | NY | 10701 |
| Barrett, Michael A | 6994 136th St | | Flushing | NY | 11367 |
| Berniejo, Maria | 95 Vanderveer St | | Brooklyn | NY | 11207 |
| Bloomfield, Leonard S | 280 Parkside Ave | Apt D1w | Brooklyn | NY | 11226 |
| Bonilia, Gladys M | 4 River Rd | Apt 3k | Roosevelt | NY | 10044 |
| Brito, Rafael A | 86-13 101 St | | Richmond Hill | NY | 11418 |
| Britt, Jai | 800 Soundview Ave | | Bronx | NY | 10473 |
| Brown, William W | 282 E 29th St | | Brooklyn | NY | 11203 |
| Burgos, Angel L | 252 Osborn St | Apt #2c | Brooklyn | NY | 11212 |
| Byrd, Shantel | 112 Hoyt St | #2J | Stamford | CT | 06905 |
| Castillo, Nelson | 66 Elm St | | Staten Island | NY | 10310 |
| Castro, Omar R | 1296 Sheridan Ave | 2c | Bronx | NY | 10456 |
| Chow, Kenneth | 3137 Coney Island Ave | | Brooklyn | NY | 11235 |
| Chowdhury, Syed A | 134-01 86th Road | | Richmond Hill | NY | 11418 |
| Cines, Keyia | 122 Tibow St | Apt #1 | Brooklyn | MA | 02301 |
| Coleman, Boyce | 24 Fairview St | | Waterbury | CT | 06710 |
| Collado, Irving E | Po Box 560192 | | College Point | NY | 11356 |
| Colon, Carlos | 1725 Randall Ave | #2C | Bronx | NY | 10473 |
| Correa, Juan C | 247 Woodbine St | | Brooklyn | NY | 11221 |
| Crespo, Jessica Y | 4 River Road | Roosevelt Island | New York | NY | 10044 |
| Cruz, Adolfo | 808 Park Ave | #1F | Brooklyn | NY | 11206 |
| Cynthia, Fincher M | 5800 Arlington Ave | Apt 5s | Bronx | NY | 10471 |
| Dacres, Owen A | 1003 Wilmohr St | Apt B2 | Brooklyn | NY | 11212 |
| Dardaine, Wilton A | 342 Fenimore ave | | Uniondale | NY | 11553 |
| Datilus, David E | 1283 Brooklyn Ave | Apt #1 | Brooklyn | NY | 11203 |
| Deandre, Harris L | 197 Drake Ave. | 1D | Yonkers | NY | 10805 |
| DeLarosa, Denny M | 2405 1st Ave | #86 | New York | NY | 10035 |
| Dionicio, Julio | 442 160th St | #4d | New York | NY | 10032 |
| Ezequiel, Ortiz | 3760 Notch St | | Macugie | PA | 18062 |
| Fenton, Damian C | 550 Cauldwell Ave | #15E | Bronx | NY | 10455 |
| Figeroux, David | 347 Bedford Ave | | Uniondale | NY | 11553 |

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|-----------------------|-----------------------------|-----------|--------------|----|-------|
| Figueroa, Jesus K | 139-16 232nd St | | Laurelton | NY | 11413 |
| Folkes, Christopher K | 135-36 229 th St | | Laurelton | NY | 11413 |
| Freeman, Anthony K | 4230 Hill Avenue | | Bronx | NY | 10466 |
| Gorin, Daniel J | 279 Plateau Ave | | Fort Lee | NJ | 07024 |
| Graham, Errol | 130-32 236th St | | Laurelton | NY | 11422 |
| Graham, Errol | 130-32 236th St | | Laurelton | NY | 11422 |
| Green, Eric D | 150 Lefferts Ave | #5B | Brooklyn | NY | 11225 |
| Guerrero, Yajaira | 17 Hill St | 21 | Brooklyn | NY | 11208 |
| Guzman, Juany D | 3760 Notch Street | | Macungie | PA | 18062 |
| Heaven, Rohan | 1587 Carrol St | 3d | Brooklyn | NY | 11213 |
| Hernandez, Fernando J | 225 South 3rd St | Apt #4 | Brooklyn | NY | 11211 |
| Hood, Katrina M | 93 William St | APT #4F | Yonkers | NY | 10701 |
| Hunter, Joseph M | 472 Franklin Ave | Apt 22 | Mount Vernon | NY | 10550 |
| Hussain, Syed A | 149-03 85th ST | | Jamaica | NY | 11435 |
| Jackson, Cecilia | 3236 Seymour Ave | 2nd Floor | Bronx | NY | 10469 |
| Jackson, Theresa | 55 School St | 7c | Yonkers | NY | 10701 |
| James, Darryl | 1803 Union St | #5B | Brooklyn | NY | 11213 |
| Justiniano, Emanuel | 533 Bushwick Ave | | Brooklyn | NY | 11206 |
| Khaili, Mohammed | 92-16 Whitney Ave, Apt 203 | | Elmhurst | NY | 11373 |
| Kimble, Eugene | P.O. Box 1818 | | White Plains | NY | 10602 |
| Konate, Bengaly | 1195 Anderson Ave | Apt 2b | Bronx | NY | 10452 |
| Lattimore, Michael K | PO Box 335 | | Yonkers | NY | 10704 |
| Lau, Alexander | 24 Hansen Rd | | Old Bridge | NJ | 08857 |
| Ledezma, Christian N | 427 Baltic St | Apt 4a | Brooklyn | NY | 11217 |
| Li And Lyn Inc | 20 Oliver St | Apt #3r | New York | NY | 10038 |
| Lopez, Joseph A | 1944 Union Port Rd | N43 | Bronx | NY | 10462 |
| Martina Jr, Evaristo | 96 Lander St | | Newburgh | NY | 12550 |
| McClinton, Mitchell W | 21 St James Pl | #1M | Brooklyn | NY | 11205 |
| Nazrul, Islam | 167-10 Highland Ave | #3 | Jamaica | NY | 11432 |
| Ore, Oscar | 6333 98th Place | | Rego Park | NY | 11374 |
| Paredes, William F | 87-27 169th St | #1A | Jamaica | NY | 11432 |
| Patrick, Paul H | 184 Keeler Ave | | Bridgeport | CT | 06606 |
| Paulino, Kenny | 260-14 E. Williston Ave | | Floral Park | NY | 11001 |
| Perez, Edwin | 625 Jeffreson PL | #1A | Bronx | NY | 10456 |
| Perez, Jimmi | 526 S 19th St | | Newark | NJ | 07103 |
| Pichardo, Oscarlin T | 316 E 184th St | | Bronx | NY | 10458 |
| Ram, Brijesh T | 177 Morse Pl | | Englewood | NJ | 07631 |

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|-------------------------|---------------------------|---------|-----------------|----|-------|
| Ramirez, Luis B | 165 Nagle Ave | #61 | New York | NY | 10040 |
| Rijos Jr, Carlos | 1711 Lacombe Ave | Apt 2c | Bronx | NY | 10473 |
| Rivas, Reginald | 183 Sedgwick Ave | 2nd Flr | Yonkers | NY | 10705 |
| Rodriguez, Michael J | 351 E 21 St | Apt 4a | Brooklyn | NY | 11226 |
| Rosado, Jose | 2039 Cruger Ave | #6a | Bronx | NY | 10462 |
| Rose, Alquon | 141-54 184th St | | Sprigfield Gard | NY | 11415 |
| Rose, Brandon | 3546 Corsa Ave | | Bronx | NY | 10469 |
| Ruiz, Jose A | 63-17 83 rd Pl | | Middle Village | NY | 11379 |
| Ruiz, Josue | 474 Suydam St | | Brooklyn | NY | 11237 |
| Salas, Andres | 322 Rodney St | | Brooklyn | NY | 11211 |
| Salazar, Diana | 35-63 79th St | #4d | Jackson Heights | NY | 11372 |
| Shamsuzzoha, Nafis | 1604 Metropolitan Ave | Apt 6f | Bronx | NY | 10462 |
| Soochoo, Wendy | 32-22 Murray Lane | | Flushing | NY | 11354 |
| Spence, Andrew O | 121 So 14th Ave | Apt 2 | Mount Vernon | NY | 10550 |
| Syed, Tabish | 149-03 85th Rd | | Jamaica | NY | 11435 |
| Tate, Joseph L | 138-53 Sprigfield | Blvd | Sprigfield Gard | NY | 11413 |
| Tavares, Maria | 316 E 184th St | Apt #1 | Bronx | NY | 10458 |
| Torres, Barron | 80 School St | | Yonkers | NY | 10701 |
| Traverzo, Drew | 17 Van Sicken | #3d | Brooklyn | NY | 11207 |
| Velez, Claudia M | 1735 Madison Ave | #3A | New York | NY | 10029 |
| Vines, Donald M | 13602 Tree Leaf Ct | | Upper Marlboro | NY | 20774 |
| White, Bryant | 41 Hawthorne Ave | Apt 3a | Yonkers | NY | 10701 |
| William, Still P | 39 Winfred Ave | Apt #2 | Yonkers | NY | 10704 |
| Williams, David | 39 Convent Ave | | Yonkers | NY | 10703 |
| Wright, Leanora P | 1587 Carrol St | #3D | Brooklyn | NY | 11213 |
| Zapata Abrey, Alexander | 555 Fdr Drive | 1b | New York | NY | 10002 |